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*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability  
 Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR  
 LEAVE TO FILE UNDER SEAL  
 EXHIBITS IN SUPPORT OF  
 BARD'S REPLY TO MOTION TO  
 EXCLUDE PORTIONS OF DR.  
 MUEHRCKE'S *TINLIN* REPORT**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively "Bard") hereby respectfully move this Court, pursuant to the Stipulated Protective Order (Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for leave to file under seal the exhibits attached in support of Bard's Reply to its Motion to Exclude the Certain Portions of Dr. Muehrcke's *Tinlin* Report served on December 7, 2018. The exhibits to the Reply contain certain trade secrets and confidential information that are protected under the Stipulated Protective Order, warranting protection from public disclosure. Accordingly, there is good cause to grant Defendants' Motion for Leave to

1 File Under Seal the Exhibits in Support of Bard's Reply to the Motion. Plaintiffs have  
 2 agreed to the filing of such motions in the past; however, to date, Plaintiffs' have not yet  
 3 responded to Defendants' attempt to meet and confer on whether Plaintiffs oppose this  
 4 Motion. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

### 5 **ARGUMENT AND CITATION OF AUTHORITY**

6 "When a court grants a protective order for information produced during discovery,  
 7 it already has determined that 'good cause' exists to protect this information from being  
 8 disclosed to the public by balancing the needs for discovery against the need for  
 9 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
 10 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-  
 11 1780-PHX-JAT, 2012 WL 2260928 at \*2 (D. Ariz. June 15, 2012) (sealing exhibits  
 12 related to "Medicis' marketing strategy, Acella's product formulation,...various e-mails  
 13 and deposition transcripts, viscosity test data, sales and marketing information, and  
 14 various other documents" because "[m]uch of this information has been previously sealed  
 15 by the Court, has been designated as confidential by the parties pursuant to the protective  
 16 order in this case, or could otherwise potentially harm the parties if released publicly  
 17 because of its confidential and sensitive nature.").

18 The exhibits to Bard's Reply contain and recite pieces of highly competitive,  
 19 confidential, proprietary information that warrant protection under Federal Rule of Civil  
 20 Procedure 26(c)(1)(G) because the documents are not made public by Bard and, if  
 21 obtained by Bard's competitors, could give an unfair economic advantage to those  
 22 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL  
 23 737485, at \*5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d  
 24 772, 786 (3d Cir. 1994)). The Exhibits cite and extensively quote dozens of confidential  
 25 Bard documents, including technical and design files, testing documents, internal adverse  
 26 event investigations and analysis, design and risk management documents, and numerous  
 27 internal e-mails between high-level Bard employees. The Reports quote so extensively  
 28 from confidential documents that filing the Reports is akin to filing the documents

1 themselves. Except for a small number of publicly available documents, all of the Bard  
 2 documents cited in the Reports were produced to Plaintiffs as “Confidential – Subject to  
 3 Protective Order” on each page pursuant to Stipulated Protective Order (Doc. 269) ¶ 6.

4 The public disclosure of these exhibits would reveal confidential, proprietary and  
 5 trade secret information and would create a heightened risk of irreparable harm to Bard’s  
 6 competitive business concerns. Further, its inclusion in the public record would not only  
 7 harm Bard because of the trade secrets and confidential information it contains, but it  
 8 would also eviscerate the significant time and resources Bard has expended in protecting  
 9 its business information.

10 Accordingly, good cause exists for sealing the Exhibits at issue.

11 RESPECTFULLY SUBMITTED this 25th day of January, 2019.

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**EXHIBIT A**

**DOCUMENTS PROPOSED TO BE FILED UNDER SEAL**

Defendants request they be permitted to file under seal the following documents:

1. Exhibit A to reply to motion to exclude Dr. Muehrcke – Comparison Chart of language from Dr. Muehrcke’s Report versus Drs. Kinney, Roberts & Kalva’s Report
2. Exhibit B to reply to motion to exclude Dr. Muehrcke – Drs. Kinney, Roberts & Kalva’s Report